

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57057; File No. SR-Amex-2007-94)

December 28, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Notes Linked to the Performance of the CBOE S&P 500 PutWrite Index (PUT<sup>SM</sup>)

I. Introduction

On August 20, 2007, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> to list and trade notes, the performance of which is linked to the CBOE S&P 500 PutWrite Index (PUT<sup>SM</sup>) (the “PUT Index” or “Index”). On November 27, 2007, the Amex submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on December 6, 2007 for a 15-day comment period.<sup>3</sup> This order approves the proposed rule change, as amended on an accelerated basis.

II. Description of the Proposal

The Amex proposes to list for trading under Section 107A of the Amex Company Guide (“Company Guide”) notes linked to the performance of the PUT Index (the “Notes”). The Notes are a series of medium-term debt securities of Eksportfinans<sup>4</sup> that provide for a cash payment at

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 56853 (November 28, 2007), 72 FR 68914 (“Notice”).

<sup>4</sup> Eksportfinans and Standard & Poor’s (“S&P”), a division of the McGraw-Hill Companies, Inc. have entered into a non-exclusive license agreement providing for the use of the PUT Index by Eksportfinans in connection with certain securities including the Notes. S&P is not responsible for and will not participate in the issuance and creation of

maturity or upon earlier exchange at the holder's option, based on the performance of the PUT Index as adjusted by an annual index fee (the "Index Fee"). As described in the Exchange's proposal,<sup>5</sup> the Notes are cash-settled in U.S. dollars and do not give the holder any right to receive any of the component securities, dividend payments, or any other ownership right or interest in the securities comprising the PUT Index. The Notes are designed for investors who desire exposure to a covered put selling options strategy on a broad market index and who are willing to forego principal protection and market interest payments on the Notes during their term.

The PUT Index is determined, calculated and maintained solely by the Chicago Board Options Exchange, Inc. ("CBOE").<sup>6</sup> The PUT Index is a benchmark index designed to measure the performance of a hypothetical investment strategy that overlays short S&P 500 puts over a money market account. The PUT Index tracks the value of an initial investment of \$100 in a portfolio that passively follows the CBOE S&P 500 PUT strategy. The PUT Index strategy invests cash at one- and three-month Treasury Bill rates and sells a sequence of one-month at-the-money S&P 500 puts (SPX). The short put position is collateralized by the Treasury bills. The theory of the PUT strategy is to trade a premium over Treasury bill rates for a leveraged exposure to S&P 500 downturns.

---

the Notes. Eksportfinans will issue the Notes under the name "Eksportfinans Index-Linked Notes. Eksportfinans has also been appointed to act as the calculation agent.

<sup>5</sup> For a more detailed description of the Notes, including their structure, applicable exchange listing and trading rules, disclosure of pricing information, surveillance, and other regulation, see Notice at 68914-15.

<sup>6</sup> For a more detailed description of the Put Index, including its construction and calculation, see Notice at 68915-17.

The Exchange submits that Section 107A and the continued listing guidelines under Sections 1001-1003 of the Company Guide will accommodate the listing and trading of Notes.<sup>7</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex.<sup>9</sup> Accordingly, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>11</sup> which sets forth Congress' finding that it is in the public interest

---

<sup>7</sup> Under Section 107A of the Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants. See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (SR-Amex-89-29).

<sup>8</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> See Securities Exchange Act Release Nos. 51426 (March 23, 2005), 70 FR 16315 (March 30, 2005) (approving the listing and trading of Morgan Stanley notes linked to the BXM Index); 50719 (November 22, 2004), 69 FR 69644 (November 30, 2004) (approving the listing and trading of Morgan Stanley notes linked to the BXM Index); 51634 (April 29, 2005), 70 FR 24138 (May 6, 2005) (approving the listing and trading of Wachovia notes linked to the BXM Index); and 51840 (June 14, 2005), 70 FR 35468 (June 20, 2005) (approving the listing and trading of JPMorgan notes linked to the BXD Index). The BXM index is the CBOE S&P 500 BuyWrite Index<sup>SM</sup> while the BXD is the equivalent index using the DJIA as the underlying index rather than the S&P 500.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The requirements of Section 107A of the Company Guide were designed to address the concerns attendant to the trading of hybrid securities, such as the Notes. For example, Section 107A of the Company Guide provides that only issuers satisfying specified asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's "Other Securities" listing standards further require that the Notes have a market value of at least \$4 million.

Furthermore, the Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Notes appropriately. As described in the Notice, the Exchange represents that the PUT Index value will be calculated and disseminated by the CBOE once every scheduled trading day after the close. Eksportfinans has agreed to seek to arrange to have the PUT Index calculated and disseminated on a daily basis through a third party if the CBOE ceases to calculate and disseminate the Index. In such an event, the Exchange agrees to obtain Commission approval, pursuant to filing the appropriate Form 19b-4, prior to the substitution of the PUT Index. Further, the Exchange has agreed to undertake to delist the Notes in the event that the CBOE discontinues calculating and disseminating the Index, and Eksportfinans is unable to arrange the calculation and dissemination of the PUT Index.<sup>12</sup>

The daily closing price of the PUT Index is calculated and disseminated by the CBOE on its Web site at [www.cboe.com](http://www.cboe.com) and via the Options Pricing and Reporting Authority at the end of

---

<sup>12</sup> See Notice at 68917.

each trading day.<sup>13</sup> The value of the S&P 500 Index is disseminated at least once every fifteen (15) seconds throughout the scheduled trading day. In addition, as indicated above, the value of the PUT Index is calculated once every scheduled trading day, thereby providing investors with a daily value of such “hypothetical” put selling options strategy on the S&P 500. In addition, the Exchange represents that it will disseminate over the Consolidated Tape Association’s Network B, a daily indicative Redemption Amount (the “Indicative Value”) to provide investors with a daily reference value of the Index. The Indicative Value, which is not adjusted on an intra-day basis, will be calculated by the Exchange after the close of trading and after the CBOE calculates the PUT Index for use by investors the next scheduled trading day.

Because the PUT Index is not calculated and disseminated every 15 seconds, the Exchange seeks a limited exception from the generic continued listing requirement set forth in Section 107D(h) of the Company Guide. In current Commentary .01 to Section 107, the Exchange provides that although the BXM and BXD Indexes do not satisfy the requirements of Section 107D(h), these Indexes nevertheless may be listed and traded pursuant to the generic standards set forth in Section 107D. The Commission believes that the dissemination of the S&P 500 along with the ability of investors to obtain put option pricing information provides sufficient transparency regarding the Index. Given the large trading volume and capitalization of the compositions of the stocks underlying the S&P 500, the Commission believes that the listing and trading of the Notes that are linked to the PUT Index should not unduly impact the market for the underlying securities comprising the S&P 500 or raise manipulative concerns. Moreover, the issuers of the underlying securities comprising the S&P 500 are subject to reporting

---

<sup>13</sup> The Commission, in connection with BXM and BXD Index Notes, approved the listing and trading of these products where the dissemination of the value of the underlying index occurred once per trading day. See supra note 9.

requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets. Accordingly, the Commissions will allow this proposed change to Commentary .01 to Section 107 as a limited exception.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Notes when transparency is impaired. The Exchange will halt trading in the Notes if the circuit breaker parameters of Amex Rule 117 have been reached.<sup>14</sup> In exercising its discretion to halt or suspend trading in the Notes, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) and other relevant factors.<sup>15</sup> The Commission further believes that the trading rules and procedures to which the Notes will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Notes are subject to Amex's rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

- (1) The Exchange's surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, Amex will rely on its existing surveillance procedures governing equities and options. Moreover, the Exchange has a general policy which prohibits the distribution of material, non-public information by its employees.
- (2) Prior to trading the Notes, the Exchange will distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of

---

<sup>14</sup> E-mail from Andrea Williams, Assistant General Counsel, Amex and Ronesha Butler, Special Counsel, Division of Trading and Markets, Commission ("Division"), Commission, on December 28, 2007.

<sup>15</sup> Id.

the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) to determine that such transaction is suitable for the customer; and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. In addition, Eksportfinans will deliver a prospectus in connection with the initial sales of the Notes.

This approval order is based on the Exchange's representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> for approving the proposed rule change, as modified by Amendment No. 1, prior to the 30<sup>th</sup> day after the date of publication of notice in the Federal Register. The Commission notes that the present proposal is similar to prior proposals that the Commission has approved.<sup>17</sup> The Commission does not believe that the proposed rule change, as modified by Amendment No. 1, raises any novel regulatory issues. Consequently, the Commission believes that it is appropriate to permit investors to benefit from these additional investment choices without delay. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,<sup>18</sup> to approve the proposal, as modified by Amendment No. 1, on an accelerated basis.

---

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> See, supra, note 9.

<sup>18</sup> 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-Amex-2007-94), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

Nancy M. Morris  
Secretary

---

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12).